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C O N F I D E N T I A L ROME 004031

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SUBJECT: GOOD ADVICE ON ARTICLE 98 AGREEMENTS FROM ITALY

REF: A. ROME 3855 AND PREVIOUS

[B](#). STATE 150277

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[C](#). STATE 146035

[D](#). ROME 3984

CLASSIFIED BY: A/DCM THOMAS COUNTRYMAN, REASONS 1.5 (B) AND (D).

[1](#). (C) SUMMARY: MFA POLITICAL DIRECTOR GIANCARLO ARAGONA URGED THE U.S. TO EXPLAIN THE EFFORT TO NEGOTIATE ARTICLE 98 AGREEMENTS UNDER THE INTERNATIONAL CRIMINAL COURT "ROME TREATY" IN TERMS OF THEIR IMPORTANCE FOR ALLOWING CONTINUING USG INTERNATIONAL INVOLVEMENT. "DON'T EMPHASIZE YOUR SEPARATENESS," ARAGONA ADVISED. RATHER, THE U.S. SHOULD ARTICULATE POSITIVE REASONS FOR ITS NEED FOR AGREEMENTS ON THE BASIS OF ITS ONGOING COMMITMENT TO INTERNATIONAL INVOLVEMENT. HE HIGHLIGHTED THE IMPORTANCE OF THE USG'S HAVING ALLIES LINED UP TO SPEAK OUT IN FAVOR OF THE AGREEMENTS AT THE UPCOMING EU DISCUSSION ON THE SUBJECT. END SUMMARY.

[2](#). (C) A/DCM TOOK ADVANTAGE OF AN AUGUST 8 MEETING ON HOW BEST TO FOCUS ASSISTANCE TO AFGHANISTAN (SEPTEL) TO DOUBLE-TRACK WITH POLITICAL DIRECTOR ARAGONA A NUMBER OF ISSUES. IN SHORT SIDEBARS, A/DCM SHARED REF C POINTS ON U.S. GOALS FOR THE UN GENERAL ASSEMBLY. REVIEWING THEM BRIEFLY, ARAGONA COMMENTED, "I SUSPECT YOU READ OUR OWN (POSITION) PAPERS." ARAGONA REVIEWED WITHOUT COMMENT THE POINTS ON RUSSIAN-IRANIAN NUCLEAR COOPERATION (REF B). A/DCM EXPLAINED THOSE POINTS HAD ALSO BEEN LEFT AT THE PRIME MINISTER'S OFFICE THE SAME DAY (GOI SUBSEQUENTLY INFORMED US THAT THE PM HAD RAISED THIS ISSUE IN A PHONE CALL TO PUTIN - SEE REF D).

[3](#). (C) THE BULK OF THE CONVERSATION WAS DEVOTED TO  
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DISCUSSION OF ARTICLE 98 AGREEMENTS UNDER THE INTERNATIONAL CRIMINAL COURT "ROME" TREATY. A/DCM REGRETTED PRESS ARTICLES NAMING ITALY AS THE NEXT COUNTRY WITH WHICH THE USG HOPED TO NEGOTIATE AN ARTICLE 98 AGREEMENT. ARAGONA AGREED THAT THE REMARK DID NOT HELP ITALY AS IT SOUGHT TO MOVE FORWARD ITSELF AND WITHIN THE CONTEXT OF EU DISCUSSIONS. "WE ARE ALREADY RECEIVING STRONG CRITICISM FROM THE OPPOSITION AND NON-GOVERNMENTAL ORGANIZATIONS," ARAGONA EXPLAINED. "ITALY HAS AN EXTREMELY STRONG CONSTITUENCY IN FAVOR OF THE ICC." HE SAID THAT THE GOI'S NEGOTIATING ROOM HAD NOT BEEN IMPROVED BY THE COMMENT.

[4](#). (C) ARAGONA DESCRIBED THE MOOD IN THE EU AS "TOUGH" AGAINST THE U.S. POSITION. THE EU PRESIDENCY AND SEVERAL STATES WERE LEADING THE CHARGE AGAINST NEGOTIATING BILATERAL AGREEMENTS. "I ASSUME YOU HAVE OTHER COUNTRIES THAT ARE MORE AMENABLE TO YOUR POSITION," ARAGONA SAID, NOTING HE HAD HEARD REPORTS THAT SOME EU COUNTRIES HAD ENCOURAGED THE U.S. IN NEW YORK TO NEGOTIATE ARTICLE 98 AGREEMENTS RATHER THAN SEEK A WAIVER AT THE UN. A/DCM CONFIRMED THIS HAD OCCURRED. THEN IT IS VITAL THAT THESE COUNTRIES SUPPORT THE U.S. IN EU DISCUSSIONS ON SEPTEMBER 4, ARAGONA INSISTED. IT WOULD BE THE RIGHT THING TO DO, BUT IT WAS ALSO CRUCIAL FROM A TACTICAL STANDPOINT. THE U.S. MUST GET THESE COUNTRIES, AND ANY OTHER FRIENDLY EU COUNTRIES, LINED UP IN ADVANCE OF THE MEETING IN ORDER TO AVOID A UNIFIED POSITION AGAINST NEGOTIATION OF ARTICLE 98 AGREEMENTS. "IF YOU FACE A WALL OF OPPOSITION," ARAGONA WARNED, ITALY ALONE COULD NOT REVERSE THE TREND. EMPHASIZING THAT HE TRUSTED HIS REMARKS WOULD BE TREATED WITH DISCRETION, ARAGONA SHARED THAT HE HAD NOT SEEN MUCH SUPPORT FOR THE U.S. POSITION IN THE EU.

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[5](#). (C) ARAGONA CONTINUED THAT HE UNDERSTOOD THE REMARKS OF A GOVERNMENT SPOKESPERSON WERE INTENDED FOR DOMESTIC CONSUMPTION. BUT THE U.S. APPROACH WAS HAVING AN ANTAGONIZING EFFECT ABROAD, HE DECLARED. RATHER THAN CONTINUOUSLY EMPHASIZING THE NEED TO "PROTECT" ITS PEOPLE, ARAGONA URGED THAT THE U.S. FOCUS ON ITS DESIRE TO REMAIN INVOLVED INTERNATIONALLY AND IN PEACEKEEPING OPERATIONS. THE U.S. WOULD GET FARTHER IF IT EMPHASIZED ITS COMMITMENT, RATHER THAN ITS SEPARATENESS AND ITS "STANDARD POSITION" AGAINST INTERNATIONAL JURISDICTIONS. ARAGONA AGAIN DECLARED THAT THE GOI WANTED TO ARRIVE AT A WAY TO ACCOMMODATE THE U.S. NEEDS; HIS REMARKS WERE OFFERED IN THAT LIGHT.

16. (C) A/DCM THANKED ARAGONA FOR THE USEFUL INFORMATION AND HELPFUL SUGGESTIONS. HE CONTINUED THAT THE ROME TREATY WAS AN ACHIEVEMENT OF WHICH EUROPEAN MFA LEGAL EXPERTS WERE UNDERSTANDABLY PROUD AND WHICH THEY WOULD WANT TO DEFEND. BUT, HE ADDED, THE ISSUE OF ARTICLE 98 AGREEMENTS WAS TOO IMPORTANT TO LEAVE TO THE EU'S LEGAL EXPERTS. WERE THE EU TO TAKE A POSITION AGAINST BILATERAL AGREEMENTS, THERE WOULD BE SERIOUS NEGATIVE EFFECTS AND NO POSITIVE ONES. IT WOULD BE A SIGNIFICANT IRRITANT IN U.S.-EU RELATIONS. "THAT WON'T HAPPEN," ARAGONA SAID FLATLY. "THERE WILL NOT BE A BINDING

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ACTION IO-00

INFO	LOG-00	NP-00	AID-00	ACQ-00	CIAE-00	DOEE-00	SRPP-00
	DS-00	EUR-00	FBIE-00	VC-00	H-01	SSA-01	TEDE-00
	INR-00	JUSE-00	L-00	VCE-00	AC-01	NEA-00	NRRC-00
	NSAE-00	OIC-02	OMB-01	PA-00	PM-00	PRS-00	ACE-00
	P-00	SCT-00	SP-00	IRM-00	SSO-00	SS-00	TRSE-00
	T-00	USIE-00	EPAE-00	SSD-00	PMB-00	DSCC-00	PRM-00
	DRL-02	G-00	NFAT-00	SAS-00	SWCI-00	/008W	
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FM AMEMBASSY ROME  
TO SECSTATE WASHDC IMMEDIATE 5438  
INFO NATO EU COLLECTIVE  
USMISSION USUN NEW YORK  
SECDEF WASHDC  
JOINT STAFF WASHDC  
NSC WASHDC  
USCINCCENT MACDILL AFB FL  
USCINCEUR VAIHINGEN GE

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DECISION NOT TO SIGN. OF THIS THERE IS NO DOUBT." THE  
PROBLEM, RATHER, WAS HOW TO SAFEGUARD THE INTEGRITY OF THE  
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COURT WITH A LEGAL RESOLUTION THAT FITS U.S. NEEDS. "ONE MAY  
BE ARTICLE 98, BUT THERE MAY BE OTHERS," HE SAID. A/DCM  
PROMISED TO KEEP THE GOI INFORMED OF WHICH OTHER EU MEMBERS  
WOULD BE SUPPORTIVE OF THE GOI'S POSITION AGAINST A NEGATIVE  
CONSENSUS.

17. (C) COMMENT: ARAGONA'S VIEWS WERE HONEST AND DIRECT  
EXPRESSIONS OF BOTH THE CONSTRAINTS ITALY FACES AND ITS  
WILLINGNESS TO BE OUR PARTNER IN THIS ENDEAVOR, HELPING US TO  
MOVE THE ISSUE FORWARD BILATERALLY AND IN THE EU CONTEXT. IT  
IS INCUMBENT ON US, HOWEVER, NOT TO MAKE THIS EFFORT ANY MORE  
DIFFICULT FOR THE GOI AND OUR OTHER ALLIES IN THIS DEBATE.  
ITALY FACES, AS ARAGONA EXPLAINED, A STRONG AND VOCAL  
DOMESTIC CONSTITUENCY IN FAVOR OF THE COURT. ITS ROLE AS  
HOST OF THE TREATY SIGNING THAT LED TO THE COURT'S CREATION  
IMPOSES YET ANOTHER PUBLIC CONSTRAINT ON ITALY'S FLEXIBILITY.  
MANY OF OUR INTERLOCUTORS UNDERSTAND THAT THE ARTICLE 98  
AGREEMENTS ARE NOT MEANT TO UNDERMINE THE COURT OR CONTRAVENE  
THE TREATY'S INTENT. JUST THE OPPOSITE, AS WE CONTINUE TO  
STRESS. BUT THE ITALIAN PUBLIC, FANNED BY THE NOTORIOUSLY  
UNRELIABLE AND PARTISAN ITALIAN PRESS, CAN BE LED TO BELIEVE  
OTHERWISE UNLESS THE DEBATE IS MANAGED AS CAREFULLY AS  
POSSIBLE. WE NEED TO ENSURE THAT OUR STATEMENTS HERE,  
ELSEWHERE IN EUROPE, AND IN WASHINGTON DO NOT MAKE THE GOI'S  
JOB MORE DIFFICULT AS IT SEEKS TO WORK WITH US IN THIS PUBLIC  
RELATIONS MINEFIELD.

18. (C) COMMENT, CONT. ARAGONA'S SUGGESTIONS FOR HONING OUR  
PUBLIC APPROACH AS WE SEEK ARTICLE 98 AGREEMENTS ARE GOOD  
ADVICE, IN THE EUROPEAN CONTEXT. DESPITE USG EFFORTS TO  
DISPEL THE MYTH, THE PERCEPTION CONTINUES IN ITALY AND  
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ELSEWHERE THAT THE U.S. PRESSURED, EVEN CONTINUES TO  
PRESSURE, COUNTRIES NOT TO SUPPORT THE COURT. OR MEASURES  
TO PROTECT AMERICANS ABROAD STRIKE MAN IN EUROPE AS  
DISINGENUOUS, HYPOCRITICAL AND OFFNSIVE. AS ARAGONA  
IMPLIED, WE NEED TO SOUNDLY RFUTE THE MISPERCEPTION THAT AN  
ARTICLE 98 AGREEMNT IS INTENDED TO CRIPPLE THE COURT. IF WE  
CAN ONVINCINGLY ARTICULATE HOW THESE AGREEMENTS, BY  
RSOLVING USG CONCERNS, WILL MAKE IT EASIER FOR THE .S. TO  
CONTINUE TO OUR LEADING INTERNATIONAL INVLVEMENT, WE WILL  
HAVE GIVEN OUR ALLIES IN THIS DSPUTE SOMETHING TO ARGUE ON  
OUR BEHALF DURING UPOMING EU DELIBERATIONS.

19. (C) CONCLUSION: EMBASY APPRECIATES DEPARTMENT'S EXTRA EFFORT TO MAKE AVAILABLE (INCLUDING ON INTRANET) INFORMATION AND TALKING POINTS ON ARTICLE 98. WE WILL BE DEPLOYING THESE IN A SERIES OF PRESS BACKGROUNDEES FOR ALL MAJOR MEDIA, DESPITE THE LATE-AUGUST ITALIAN HOLIDAY SEASON. WE WOULD GREATLY APPRECIATE THE DEPARTMENT AND OTHER POSTS IN EU STATES KEEPING US INFORMED OF WHICH OTHER EU MEMBERS ARE LIKELY TO RESIST ADOPTION OF A NEGATIVE CONSENSUS, SO THAT THE GOI CAN COORDINATE A COMMON APPROACH TO THE EU DISCUSSION OF THIS TOPIC.  
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